JAMES G. STOCKTON

IBLA 88-116 Decided November 2, 1989

Appeal from a decision of the Montana State Office, Bureau of Land Management, rejecting color-of-title application M 75377.

Affirmed.

1. Color or Claim of Title: Applications

A class 1 color-of-title claim requires peaceful adverse possession in good faith by a claimant, his ancestors or grantors, under claim or color of title for more than 20 years. The claim or color of title must be based upon a document from a party other than the U.S. Government which on its face purports to convey the claimed land to the applicant or the applicant's predecessors.

APPEARANCES: James G. Stockton, Huntley, Montana, pro se.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

James G. Stockton has appealed from a decision of the Montana State Office, Bureau of Land Management (BLM), dated October 28, 1987, reject-ing his class 1 application (M 75377) under section 1 of the Color-of-Title Act, 43 U.S.C. § 1068 (1982), for the purchase of lots 12 and 13 of sec. 33, T. 3 N., R. 28 E., Montana Principal Meridian, Yellowstone County, Montana, comprising approximately 52 acres.

In his color-of-title application, filed October 14, 1987, Stockton provides the following basis for his claim to lots 12 and 13: "The [homestead] settlement claim of William Lloyd Stockton as evidenced by notices beginning of absence from settlement claim filed March 27, 1935, and January 28, 1941. The claim was assigned to the applicant by settlement claim dated December 6, 1982 and Quit Claim Deed of even date therewith."

The case file contains a status report dated October 30, 1947, in which the Director, BLM, informed the Acting Manager, District Land Office, BLM, that lots 12 and 13 were embraced in the settlement claim of William L. Stockton, that he had filed "[n]otices of beginning of absence from settlement claim" on March 27, 1935, and on January 28, 1941, and that

there were "no other applications or entries for this land and it is not otherwise withdrawn or appropriated." 1/ However, there is no evidence in the case file that William L. Stockton ever filed an entry application or that he ever submitted final proof of his settlement claim.

In its October 28, 1987, decision, BLM provided the following reasons for rejecting appellant's color-of-title application:

> 1. Your grantor, Mr. William L. Stockton, apparently based his ownership of the land on a "Settlement Claim." Such a claim cannot be used as the basis of adverse possession under the Color-of-Title Act since it originates from the United States. The document which could start title from other than the United States is the 1982 quitclaim deed from Mr. Stockton to you. However, it does not satisfy the requirement for more than 20 years of adverse possession.
>
> 2. All of Sec. 33 was withdrawn for reclamation purposes by Secretarial Order of February 16, 1909. As such, it is not open to claim under the Color-of-Title Act because a claim is not held in peaceful, adverse possession when it was initiated while the land was withdrawn, or reserved for federal purposes.
>
> * * * * * * *
>
> An applicant under the Color-of-Title Act has the burden of proof to establish to the Secretary of the Interior's satisfaction that the statutory conditions for purchase under the Act have been met. The applicant must establish that each of the requirements for a Class 1 claim has been met. A failure to carry the burden of proof with respect to any one of the elements is fatal to the application. Items 1 and 2 listed above identify fatal defects.

In his statement of reasons (SOR) for appeal, Stockton makes a number of arguments which relate more to the validity of his uncle's homestead entry than to the propriety of BLM's October 28, 1987, decision rejecting his color-of-title application. He asserts that beginning approximately around 1904-06, "the entire lands encompassing the current Huntley Project south of the Yellowstone River were removed from general federal jurisdiction and placed in the jurisdiction of the Bureau of Reclamation * * * and could thereafter be homesteaded on all unsurveyed portions, except for townsites" (SOR at 1). Moreover, he provides the following background information about his uncle's homestead claim:

> My uncle commenced his residence on the land in either 1924 or 1925. After filing the settlement claim in March of 1935, he

---

1/ On Feb. 16, 1909, this land was withdrawn for reclamation purposes, as provided in section 3, Act of June 17, 1902, 32 Stat. 388.

> was advised by the department that he could not receive his homestead until the same had been surveyed. When the survey was completed, the department immediately issued a homestead patent to one Julius Dekkatle, for the land immediately to the east of that claimed in my application, and which borders the same land. My uncle advised me that he was under the understanding at all times that likewise, his application had also been acted upon by the department but from the few documents appearing in the file Serial No. 035473, it appears that for some reason the application was either lost or ignored in the department's files.
>
> Pursuant to that understanding, my uncle constructed two buildings on the property, dug ditches, built a pumping station, and commenced the cultivation of grains and sugar beets on the property which he worked together with my dad, grandad and myself up until 1982 when he quit-claimed the property to me. My uncle died in October of 1986.
>
> I cannot understand how if as the department contends the lands were withdrawn and unavailable for settlement that the director of the Huntley Project understands otherwise, and more importantly that an immediately adjacent land owner received a homestead patent to the land bordering the claimed property immediately on the east after the survey was accepted by the department in the 1930's. If the settlement claim of my uncle has lain dormant due to its mishandling or loss by the department, then I do not believe that can be held against my uncle and myself at this time.
>
> * * * * * * *
>
> In my opinion, the application I filed meets all qualifications for a Class One claim and that, therefore, the decision dated October 28, 1987 should be reversed by the Board.

(SOR at 1-2).

[1] Section 1 of the Color-of-Title Act, 43 U.S.C. § 1068 (1982), sets forth the requirements that must be met by a claimant in order to receive a patent under the Act:

> The Secretary of the Interior (a) shall, whenever it shall be shown to his satisfaction that a tract of public land has been held in good faith and in peaceful, adverse, possession by a claimant, his ancestors or grantors, under claim or color of title for more than twenty years, and that valuable improvements have been placed on such land or some part thereof has been reduced to cultivation, or (b) may, in his discretion, whenever it shall be shown to his satisfaction that a tract of public land has been held in good faith and in peaceful, adverse, possession by a claimant, his ancestors or grantors, under claim or color of title for the period commencing not later than January 1, 1901, to the

> date of application during which time they have paid taxes levied on the land by State and local governmental units, issue a patent for not to exceed one hundred and sixty acres of such land upon the payment of not less than $1.25 per acre * * *.

A claim under part (a) of this section is defined by the Department as a claim of class 1; a claim under part (b) is defined as a claim of class 2. 43 CFR 2540.0-5(b). Since Stockton's application was under a claim of class 1, he must show, inter alia, that lots 12 and 13 "have been held in good faith and in peaceful, adverse, possession by [him], his ances-tors or grantors, under claim or color of title for more than twenty years."

In order to satisfy this statutory requirement, Stockton must establish a claim of title of more than 20 years based upon an instru-ment which, on its face, purports to convey title to lots 12 and 13. Jerome L. Kolstad, 93 IBLA 119, 121 (1986); Carmen M. Warren, 69 IBLA 347, 349 (1982). The burden of establishing that the requirements of the Act have been met is upon Stockton. As the Board stated in Corrine M. Vigil, 74 IBLA 111, 112 (1983):

> An applicant under the Color of Title Act has the burden of proof to establish to the Secretary of the Interior's satisfaction that the statutory conditions for purchase under the Act have been met. Jeanne Pierresteguy, 23 IBLA 358, 83 I.D. 23 (197[6]); Homer W. Mannix, 63 I.D. 249 (1956). The applicant must establish that each of the requirements for a class 1 claim has been met. A failure to carry the burden of proof with respect to one of the elements is fatal to the application. Lester Stephens, 58 IBLA 14 (1981).

BLM was clearly correct in rejecting Stockton's class 1 color-of-title application. An applicant under the Color-of-Title Act must base the claim or color of title upon a document from a source other than the United States which on its face purports to convey the land to the applicant or predecessor. In Ramona & Boyd Lawson, 94 IBLA 220, 225 (1986), the Lawsons filed a class 1 color-of-title application for lot 10, a parcel of land adjacent to Tract 43, located in the SW^ SW ^ sec. 22, T. 18 N., R. 12 E., New Mexico Principal Meridian in San Miquel County, New Mexico. Cristino Rivera received a homestead patent for Tract 43 in 1888; his interest passed to Encarnacion Rivera, his son, and Ignacita Rivera, his daughter-in-law, in 1946; the son died in 1966; and Ignacita Rivera issued a quitclaim deed to the Lawsons in 1979. The Board affirmed BLM's rejection of the Lawsons' class 1 application for lot 10, explaining as follows:

> Appellants assert that lot 10 was once part of patented Tract 43, thereby basing their claim of title on the patent document from the United States as the source of title to lot 10. However, adverse possession against the United States under this Act based on the mistaken belief that a tract was embraced in one's patented holdings is inadequate because it lacks the basic element of a claim or title derived from some source other than the United

States. Marcus Rudnick, 8 IBLA 65, 66 (1972). The issue whether or not a patent includes certain land is not properly raised in a color-of-title application. As the Board stated in Benton C. Cavin, 83 IBLA 107, 109 n.2 (1984), "an applicant for color-of-title relief necessarily admits, for the purpose of consideration of his application, that legal title remains in the Government and, at least insofar as the adjudication of that application is concerned, is estopped from alleging that he owns legal title to the land." We stated further in Jerome L. Kolstad, 93 IBLA 119, 122 (1986),

> Insofar as a color-of-title application is concerned, an applicant necessarily admits the title to the land is in the United States since, by filing the application, an applicant seeks to have the United States convey actual title to him. Thus, an applicant cannot be heard to assert that his color of title is based on a patent from the Government because, if this were true, the applicant would possess actual title not color of title. It is for this reason that the color of title upon which an applicant bases his or her claim [must] arise from a source other than the United States. Thus, the patent issued to McCoy cannot serve as a basis for the initiation of appellant's color of title. [Emphasis added].

See also Minnie E. Wharton, 4 IBLA 287, 295-96, 79 I.D. 9-10 (1972), aff'd, United States v. Wharton, 514 F.2d 406 (9th Cir. 1975). Thus, appellants' homestead patent document cannot support a color-of-title claim.

As explained above, however, lot 10 was never within homesteaded Tract 43. Lot 10 was the designation given to a parcel of land next to the western boundary of Tract 43. As appellants have produced no document originating a chain of title, there is no chain of title. Ownership of lot 10 has continuously been in the United States.

94 IBLA at 225-26.

Stockton's color-of-title application rests upon an even weaker basis than that filed by the Lawsons. The only instrument which Stockton offers in establishing chain or claim of title to the land is the 1982 quitclaim deed in which his uncle purports to convey the land to him. William L. Stockton's claim to the land derives from what appears from the record before the Board to be an unperfected homestead entry. As noted, there is no evidence that William L. Stockton ever filed an entry application or that he ever submitted final proof of settlement of lots 12 and 13 under the homestead laws. See 43 U.S.C. Chapter 7, repealed by P.L. 94-579, Title VII, § 702, Oct. 21, 1976, 90 Stat. 2787. Title to public land claimed under the homestead laws remains in the United States until a patent issues. Since William L. Stockton did not receive a patent

to lots 12 and 13, title to such land remains in the United States. See, e.g., Wadkins v. Producers Oil Co., 57 So. 937, aff'd, 227 U.S. 368 (1913).

As Stockton has produced no document originating a chain of title, there is no chain of title. The only document in the record transferring title to lots 12 and 13--the 1982 quitclaim deed from William L. Stockton to appellant--is less than 20 years old. Stockton cannot use this document to establish a class 1 claim. Ramona & Boyd Lawson, supra at 226.

Given Stockton's failure to produce a document which could support his color-of-title claim, we need not resolve the issue of his good faith in filing the application. While Stockton may have acted in the sincere belief that his uncle owned lots 12 and 13 when he purported to convey them to him, such belief does not amount to "good faith" as that term is used in the Color-of-Title Act. See Ramona & Boyd Lawson, supra at 226.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Montana State Office is affirmed.

Will A. Irwin
Administrative Judge

I concur:

Franklin D. Arness
Administrative Judge